IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WP(C).No. 9298 of 2007(F)

PETITIONER:

M/S. HINDUSTAN LEVER LIMITED,
WILLINGDON ISLAND, KOCHI-3, REPRESENTED BY
ITS LEGAL MANAGER, MR. T.S.VENKATESWARAN.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENTS:

1. **ASSISTANT COMMISSIONER (ASSMT.),**
   COMMERCIAL TAXES, SPECIAL CIRCLE, MATTANCHERRY.

2. **DEPUTY COMMISSIONER OF COMMERCIAL**
   TAXES (APPEALS), ERNAKULAM.

3. **THE STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY (TAXES), GOVERNMENT OF KERALA,
   SECRETARIAT, THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.9298/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THE 1ST RESPONDENT TO THE PETITIONER FOR 02-03 DT.22.12.06 KGST.

EXT.P2:- COPY OF THE CST ASSESSMENT ORDER OF THE 1ST RESPONDENT FOR 02-03 DT.22.12.06 ISSUED TO THE PETITIONER.

EXT.P3:- COPY OF THE APPEAL FOR KGST ASSESSMENT BEFORE THE 2ND RESPONDENT DT.23.2.07.

EXT.P4:- COPY OF THE APPEAL FOR CST ASSESSMENT BEFORE THE 2ND RESPONDENT DT.23.2.07.

EXT.P5:- COPY OF THE STAY PETITION FOR KGST ASSESSMENT BEFORE THE 2ND RESPONDENT DT.23.2.07.

EXT.P6:- COPY OF THE STAY PETITION FOR CST ASSESSMENT BEFORE THE 2ND RESPONDENT DT.23.2.07.

EXT.P7:- COPY OF THE ORDER NOS.STA 356/07 & 357/07 OF THE 2ND RESPONDENT TO THE PETITIONER DT.13.3.07.

EXT.P8:- COPY OF THE JUDGMENT IN TRC 64 & 66/89 REPORTED IN 84 STC 34 DT.JAN. 23, 1990 OF HIGH COURT OF KERALA IN BROOKE BOND INDIA LTD. VS. STATE OF KERALA.

EXT.P9:- COPY OF THE ORDER DT.28./10.2000 IN STATE OF KERALA VS BROOK BOND INDIA LTD. (TA. NOS.172/90 ETC) OF THE STAT, ADDL.BENCH,II, ERNAKULAM.

EXT.P10:- COPY OF THE ORDER DT.5.10.06 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P11:- COPY OF THE ORDER OF THE 2ND RESPONDENT TO THE PETITIONER DT.7.11.05 FOR THE YEAR 2000-01.

EXT.P12:- COPY OF THE ORDER DT.19.11.01 ISSUED BY THE 2ND RESPONDENT TO BROOKE BOND LIPTON INDIA LTD FOR 96-97.

EXT.P13:- COPY OF THE REPRESENTATIONS MADE BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P14:- COPY OF THE ORDER OF THE TRIBUNAL IN TA. NO.9/95 DT. 24.10.01 ISSUED TO PONDS (INDIA) LTD.

EXT.P15:- COPY OF THE ORDER OF THE TRIBUNAL APPEAL IN TA./ NO.555/04 DT.26.10.04 ISSUED TO TATA COFFEE LTD.

/TRUE COPY/

K.BALAKRISHNAN NAIR,J.

WP(C)NO.9298 OF 2007-F

Judgment

The petitioner challenges Ext.P7 interim order passed by the 2nd respondent on the stay applications filed by it along with Exts.P3 and P4 appeals. It has been directed to pay Rs.75 lakhs. The petitioner points out that under Exts.P9 to P12, more than Rs.1 crore is payable to it by the State as sales tax paid in excess. So, it prays, the requirement of deposit of Rs.75 lakhs for stay pending appeal may be waived.

2. I heard the learned Government Pleader also. In view of the submission made by the petitioner regarding the amount due to it from the State, I feel that the appellate authority should be directed to reconsider the stay applications after verifying the above said claim made by the petitioner. Along with a copy of this judgment, the petitioner may produce a statement of the amounts payable to it under orders, which have become final. In that event, the 2nd respondent will consider and pass fresh orders on Exts.P5 and P6 stay applications in accordance with law within two weeks from the date of receipt of a copy of this Judgment. The stay of collection of tax under Exts.P1 and P2 shall remain in force for a period of one month from today.

The Writ Petition is disposed of as above.

20.03.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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